Supreme Court, U.S.
FILED

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No. _____

In The
SUPREME COURT OF THE UNITED STATES

William C. ~~Stearman~~, III,
Plaintiff-Appellant-Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee-Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ORIGINAL PETITION FOR WRIT OF CERTIORARI

WILLIAM C. STEARMAN, III
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Questions Presented

Due Process—No Discovery

1. Did VASQUEZ violate Due Process by consolidating the two cases such that the discovery period ended before it began?

Due Process—No Evidence, No Claim

2. Does IRC § 7459(d) allow "no-evidence-required" judgments?

STATUTORY CHALLENGE

3. If so, does IRC § 7459(d) violate Due Process?

Equal Protection—Tax Court Rules

4. Does TCR 54 restrict petitioners only?

Due Process—Ethics, Sanctions

5. Should VASQUEZ have self-recused? If so, is *Liljeberg* satisfied?

6. How do the Tax Court and the 5th Circuit avoid paying Stearman penalties per § 6673?

Parties

The parties to the court of appeals judgment sought to be reviewed are the following:

Case No. 05-60521

Appellant
William C. Stearman, III

Appellee
COMMISSIONER OF INTERNAL REVENUE
(thus SECRETARY OF THE TREASURY ("Secretary"), and UNITED STATES OF AMERICA)

EILEEN J. O'CONNOR, Assistant AG
KENNETH L. GREENE, DOJ
KENNETH W. ROSENBERG, DOJ (sole signatory)

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Citations to decisions below

Trial: T.C. Memo. 2005-39
Appeal: __ F.3d __ (5th Cir. 2006) (Friday, 13 Jan).

Jurisdiction

(i) Date Judgment Entered
13 January 2006 [+90: 13 April 2006]

(ii) Rehearing, Extension None

(iii) Rule 12.5 Cross-appeal N/A

(iv) Statutes, Jurisdiction
Review by certiorari of decision by court of appeals, 28 U.S.C. §§ 1254(1), 2101(c).

(v) Regarding notice of statutory challenge Rule 29.4(b)
Stearman raised his statutory challenges IRC § 7459(d) on appeal, where it first came up, and DOJ received a copy of that Brief/Notice. Therefore, "28 U.S.C. § 2403(a) may apply;" the initial filing of this petition is served on the Solicitor General; and no other formal notice, outside the normal course of litigation, has been issued.

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Key Statutory Language

Tax Court Rules

Rule 30. Pleadings Allowed

There shall be a petition and an answer, and, where required under these Rules, a reply. No other pleading shall be allowed, except that the Court may permit or direct some other responsive pleading. (See Rule 173 as to small tax cases.)
TCR 30.

Rule 34(b)(4) and (5) (Standards for Petitions).

TCR 34(b)(4)—*ASSIGNMENT* OF ***ERROR***	
[The petition in a deficiency or liability action shall contain (see Form 1, Appendix I):]	"Rule 34(b)(4) requires that a petition filed in this Court contain
(4) Clear and concise assignments of each and every ***error*** which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency	clear and concise assignments of each and every error that the taxpayer alleges to have been committed by the Commissioner in the determination of the deficiency
or liability.	and the additions to tax or penalties in dispute."
The assignments of error shall include issues in respect of which the burden of proof is on the Commissioner. Any issue not raised in the	VASQUEZ (3 Mar 2005) (indicates the differences).

assignments of error shall be deemed to be conceded. Each assignment of error shall be separately lettered. TCR 34(b)(4) (emphasis added).	
TCR 34(b)(5)—*ALLEGATION* OF ***FACTS***	
[The petition in a deficiency or liability action shall contain (see Form 1, Appendix I):] (5) Clear and concise lettered statements of the ***facts*** on which the petitioner bases the assignments of error, ***except with respect to those assignments of error as to which the burden of proof is on the Commissioner.*** TCR 34(b)(5) (emphasis added).	"Rule 34(b)(5) further requires that the petition shall contain clear and concise lettered statements of the facts on which the taxpayer bases the assignments of error." VASQUEZ (3 Mar 2005) (indicates the differences).

Rule 36. Answer

(b) Form and Content: The answer shall be drawn so that it will advise the petitioner and the Court fully of the nature of the defense. It shall contain a specific admission or denial of each material allegation in the petition; however, if the Commissioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, then the Commissioner shall so state, and such statement shall have the effect of a denial. If the Commissioner intends to qualify or to deny only a part of an allegation, then the Commissioner shall specify

so much of it as is true and shall qualify or deny only the remainder. ***In addition, the answer shall contain a clear and concise statement of every ground, together with the facts in support thereof on which the Commissioner relies and has the burden of proof.*** Paragraphs of the answer shall be designated to correspond to those of the petition to which they relate. TCR 36(b) (emphasis added).

Rule 37. Reply

(a) Time To Reply or Move: *The petitioner shall have 45 days from the date of service of the* ***answer*** *within which to file a reply, or 30 days from that date within which to move with respect to the* ***answer***. With respect to an amended answer or amendments to the answer the petitioner shall have like periods from the date of service of those papers within which to reply or move in response thereto, except as the Court may otherwise direct. TCR 37(a) (emphasis added).

Rule 40. Defenses and Objections Made By Pleading or Motion

Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may, at the option of the pleader, be made by motion: (a) Lack of jurisdiction, and ***(b)*** *failure to state a claim upon which relief can be granted.* If a pleading sets forth a claim for relief to ~~which~~ the adverse party is not required to file a responsive pleading, then such party may assert at the trial any defense in law or fact to that claim for relief. ***If, on a motion asserting failure to state a claim on which relief can be granted, matters outside the pleading are to be presented, then the motion shall be treated as one for summary***

judgment *and disposed of as provided in Rule 121, and the parties shall be given an opportunity to present all material made pertinent to a motion under Rule 121.*
TCR 40 (emphasis added).

Rule 54. Timely Filing and Joinder of Motions

Motions must be made timely, unless the Court shall permit otherwise. ***Motions shall be separately stated and not joined together***, except that motions may be joined in the following instances: (1) Motions under Rules 51 and 52 directed to the same pleading or other paper; and (2) motions under Rule 56 for the review of a jeopardy assessment and for the review of a jeopardy levy, but only if the assessment and the levy are the subject of the same written statement required by Code section 7429(a)(1).
TCR 54 (emphasis added).

Internal Revenue Code

Section 7459. Reports and decisions

(d) EFFECT OF DECISION DISMISSING PETITION.—***If*** a petition for a redetermination of a deficiency has been filed by the taxpayer, [***then***] a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Secretary. An order specifying such amount shall be entered in the records of the Tax Court ***unless the Tax Court cannot determine such amount from the record in the proceeding***, *or unless the dismissal is for lack of subject matter jurisdiction.*
IRC § 7459(d) (emphasis added).

Section 6673. Sanctions and costs awarded by courts

(a) Tax court proceedings

(1) Procedures instituted primarily for delay, etc.

Whenever it appears to the Tax Court that

(A) proceedings before it have been instituted or maintained by the taxpayer primarily for delay,

(B) the taxpayer's position in such proceeding is frivolous or groundless, or

(C) the taxpayer unreasonably failed to pursue available administrative remedies,

the Tax Court, in its decision, may require the taxpayer to pay to the United States a penalty not in excess of $25,000.

(2) Counsel's liability for excessive costs

Whenever it appears to the Tax Court that any attorney or other person admitted to practice before the Tax Court has multiplied the proceedings in any case unreasonably and vexatiously, the Tax Court may require

(A) that such attorney or other person pay personally the excess costs, expenses, and attorneys' fees

reasonably incurred because of such conduct, or

(B) if such attorney is appearing on behalf of the Commissioner of Internal Revenue, that the United States pay such excess costs, expenses, and attorneys' fees in the same manner as such an award by a district court.

(b) Proceedings in other courts

(1) Claims under section 7433

Whenever it appears to the court that the taxpayer's position in the proceedings before the court instituted or maintained by such taxpayer under section 7433 is frivolous or groundless, the court may require the taxpayer to pay to the United States a penalty not in excess of $10,000.

(2) Collection of sanctions and costs

In any civil proceeding before any court (other than the Tax Court) which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, any monetary sanctions, penalties, or costs awarded by the court to the United States may be assessed by the Secretary and, upon notice and demand, may be collected in the same manner as a tax.

(3) Sanctions and costs awarded by a court of appeals

In connection with any appeal from a proceeding in the Tax Court or a civil proceeding described in paragraph (2), an order of a United States Court of Appeals or the Supreme Court awarding monetary sanctions, penalties or court costs to the United States may be registered in a district court upon filing a certified copy of such order and shall be enforceable as other district court judgments. Any such sanctions, penalties, or costs may be assessed by the Secretary and, upon notice and demand, may be collected in the same manner as a tax.

26 U.S.C.A. § 6673.

Citations to additional authority

For Tax Court discovery policy, *see also* TCRs 51, 70(a)(1), 90, 91 and 100.

26 U.S.C.A. § 7458 (West 2002) (*taxpayer* read also to mean *petitioner*; otherwise, it presumes facts not proved).

28 U.S.C. § 3002 (2000).

31 U.S.C. §§ 321(d), 5101, 5102, 5103 (2000).
42 U.S.C.A. § 1320b-9(k) (West 2003).

Public Law 105-61, § 641.

Economic Growth and Regulatory Paperwork Reduction Act of 1996, P.L. No. 104-208, § 2609.

The Gold Bullion Coin Act of 1985. P.L. No 99-185 (Dec. 17, 1985), 99 Stat. 1177.

Act of October 28, 1977, Pub. L. No. 95-147, § 4(c), 91 Stat. 1227, 1229 (codified as amended at 31 U.S.C. § 5118(d)(2)).

Coinage Act of 1965, Pub. L. No. 89-81, § 211(a), 79 Stat. 254, 257 (July 23).

H.R.J. Res. 192, 73d Cong. (1933) (enacted) (Sess. I, Ch. 48, June 5) (Public Res., No. 10) (48 Stat. 112, 113 (1933)) (formerly codified at 31 U.S.C. § 463) (codified as amended at 31 U.S.C. § 5118(d)(2)).

Statement of the Case

Trial Court Jurisdiction

26 U.S.C.A. § 7442 (68A Stat. 879 (1954)).

Will Rogers

"It's not what a man doesn't know that tends to create problems for him in life; it's what he knows that just ain't so."

Double or Nothing

What amount of sanctions ***does*** it take to change ancient law? In *Tello II*, [1] sanctions were $3,000; in the then-record-setting *Tello I*, [2] $6,000. In *Stearman*, [3] they doubled again, to $12,000.

But, via Florance's case, the *amount* become zero. [4] Thus, ***the ancient law has stayed***, and ***no amount of sanctions has changed it***.

It's a community effort, and a "same page" perspective seems to be developing. We can but hope there's still time enough for any of this to matter.

What *finally* derailed the 5th Circuit's bulldozer?

In that 11 weeks (75 days) between 13 January and 29 March, something happened. Whatever else is properly included, here are at least two contributing events.

- Wallis v. COMMISSIONER, Docket No. 8244-04. Congratulations, again, to Judge FOLEY, who, by

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[1] *See* TELLO v. COMMISSIONER, No. 04-61146 (5th Cir.).

[2] *See* TELLO v. COMMISSIONER, No. 04-60955 (5th Cir.).

[3] This case.

[4] *See* Florance v. COMMISSIONER, No. 05-60552 (5th Cir.) (29 Mar 2006). On 6 Dec 2005, one panel remanded that case to the Tax Court (VASQUEZ), who went silent. There's a ***reason*** a completely *different* panel, *fully* aware the remand, entered the *judgment*, *without* citation to *Tello I* or *Stearman*, *without* monetary sanctions, and *before* VASQUEZ could enter an increased "judgment" amount. In Florance's case, VASQUEZ got even more maniacal than he did here, "unfiling" some ***54 documents***, including 10 "secret orders," and compelling Florance to respond to the Secretary's ***declaration of war***.

his silence, overruled Respondent's improperly joined, and facially incompetent, motion**S**, thereby confirming that (1) the ancient law *is not* frivolous, (2) those who argue the ancient law *are not* subject to sanctions, and maybe even (3) TCR 54 ***does*** apply equally, i.e., Respondent really ***does*** have to follow the TCRs, too. Thus, in the face of the Tax Court's very own published opinions in *Stearman* [5] and *Florance*, [6] and in the face of the 5th Circuit's published opinion in *Tello I*, FOLEY actually *applied* the ancient law and ruled *against* COMMISSIONER. Given the problems with Record-handling and the denial of discovery, Wallis filed his Notice of Appeal in February.

- Stearman v. SMITH, et al., No. 3:06-CV-273-L (N.D. Tex. Dal. Div.) (filed 13 Feb 2006). Each of the seven individual defendants included so far have gone silent.

The 5th Circuit understand the legal principles ...

See FDIC v. Barton, 104 F.3d at 701-02; *Conkling*; *C&B Sales*.

... but it's a *change* for them to apply those principles in (*pro se*) "tax" cases.

Rulings shock the conscience.

Their prior refusal to apply the law shocks the conscience. This is simply too ancient to be complicated.

Verified petitions—no rebuttal.

Stearman submitted a verified petition in each of his two cases, traditionally the *proper* way to initiate *any* maritime proceeding.

Answer in one case; no Answer in the other.

In Docket No. 20928-03, COMMISSIONER filed an Answer, with an ineffective counterclaim. But most

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[5] T.C. Memo. 2005-39.

[6] T.C. Memo. 2006-60, -61.

important is the lack of any counter-Affidavit. In Docket No. 15561-04, there is not even an Answer.

Sole source of evidence is the petition.

Stearman's verified petition supplied the only evidence of Record in each case.

The Maniacal VASQUEZ.

On appeal, Stearman had to reconstruct the Record by adding back 14 documents and two "secret orders," a total of 16 documents. *Ballard* proved to be too subtle.

Discovery period ended *before* it started!

When VASQUEZ granted Respondent's improperly joined motion***S***, Stearman's discovery period for the second case ended 17 days before it started.

Discovery can't start until 30 days ***after*** "joinder of issue." TCR 70(a)(2). Discovery must stop 45 days ***before*** the trial date. *Id.* *See also* TCR 90(a).

In No. 15561-04, joinder of issue occurred on 8 October 2004. [3]. Thus, discovery could **start** on **Monday, 8 November.** Given the trial date of 6 December, [5], [18], discovery had to **end** by **Friday, 22 October.** Thus, due to the joinder of cases, which occurred two weeks ahead of trial, **Stearman's discovery time period in No. 15561-04 *ended* 22 October, which is 17 days before it *started*, on 8 November.**

Stipulations policy, Stearman's proposed stipulations, and the IRS attorney's fraud on the Tax Court.

In the first case, Stearman served his Proposed Stipulations. [6.08], [14] (the first pages of the "unfiled" documents are in Ex. 2). *See* TCR 51, 70(a)(1), 70(a)(2), 90, 91(a) and 100. *See also* [6.03] (Stearman's Objection to TCR 91) (TCR 91 is not *all* bad; in fact, its stipulation policy should be implemented in the FED. RS. CIV. P., generally). READ boldly asserted that Stearman never complied with this step. [11].[7] Having heard nothing

[7] Ex. 10, Stearman v. SMITH, et al., No. 3:06-CV-273-L (N.D. Tex. Dal. Div.), includes three of the CMRRR cards showing proof of delivery to and receipt by (1) READ, (2) BENFORD (Area Counsel, Area 5), and

from READ regarding stipulations, Stearman initiated discovery. [6.11], [6.12], [6.13]. READ objected. [11]. When the dust settled, Stearman never got his discovery.

Blatantly biased application of TCR 54.

By "secret order," [6.16], VASQUEZ "unfiled" Stearman's motion requesting time for discovery or a continuance. [6.11]. While several filings have the same style content as that objected to by [6.16], [6.11] was "unfiled," but the other documents were not. *See* [14], [16], [21]; [7], [8], [13].

More significantly, VASQUEZ "unfiled" [6.11] also alleging "improper joinder." *See* [6.16]. Yet, Respondent's "improperly joined" motion***S***, [7], [8], were not only not "unfiled," but also were "ordered" responded to, [9], [10], and then were granted, [13], [Tr. 18 p.3], [19], [20].

Respondent's joined motion***S*** are neither TCR 51 nor TCR 52 motions, and TCR 56 is irrelevant.

The Motive?—Stearman demanded *proof* of the claim against him.

The *threshold* burden is on Respondent.

By verified statement, in each case, Stearman denied that he is a fiduciary to this alleged beneficiary/claimant. Respondent was, thereby, compelled (A) to satisfy its alleged capacity as beneficiary by proving up, under penalty of perjury, the ancient threshold burden of proof carried by ***all*** who assert a claim as beneficiary, including the agreement Stearman signed by which he voluntarily assumed a fiduciary capacity with respect to *this* claimant, or (B) to withdraw its claim and go away.

But VASQUEZ opted to skip that step ...

VASQUEZ, acting on what he knows, that just ain't so, in violation of his oath to uphold the "law" of "this state," and in extreme violation of judicial ethics, blew

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(3) KORB (Chief Counsel) of Stearman's Proposed Stipulations. The fourth copy served was served on PARIZEK, a manager with IRS, UTAH, via CMRRR. *See also* [6.03], in Docket No. 20928-03.

past all the Tax Court Rules and found the existence of a fiduciary obligation never proved, and then ordered Stearman to make a distribution to an "unknown beneficiary" from an "unknown trust." Then, VASQUEZ sanctioned Stearman for his having done what any competent alleged fiduciary would do when facing the "unknown beneficiary" of the "unknown trust" problem.

... with the 5th Circuit's full blessings.

The 5th Circuit, acting on what they know, that just ain't so, doubled the insult, blasting away at Stearman because he dared to argue the law applicable to this case.

Sec. 7459(d)—the Tax Court's djinni

By rubbing the § 7459(d) lamp, the Tax Court are magically transported by flying carpet to a place where pleadings and evidence just don't matter.

The difference between their land of fantasy and the real world is that § 7459(d) supplies neither pleadings ***nor*** evidence. Nothing about § 7459(d) allows ignoring the ***evidence*** that ***is*** of Record. Thus, nothing about § 7459(d) authorizes ignoring Stearman's verified petitions, or automatically rebuts them, at all, much less under oath.

Also key to § 7459(d) is its clear condition precedent: "taxpayer." Since this critical term was ***never*** supported by ***evidence*** of Record, § 7459(d) never even applied!

***Pro se*'s are "f-word" and "g-word," *by definition* ...**

Somehow, it became *Stearman's* problem that all these attorneys and "judges" have based their entire "tax" careers on a scam and a lie. Paradigm shifts of this magnitude are ***wicked***, but retaliation and extortion under color ***will not*** stand as public policy in "this state."

As just one of several, Stearman allowed ***EVERY*** opportunity for *prevention*. Having been ***slammed*** at ***EVERY*** single turn, Stearman shows that the law that *prevents* is the exact same law that *cures*. Let the economic analysis of the options speak for itself.

... or at least that's how it used to be.

The subtlety of *Tello I* [8] and *Tello II* [9] went *flying* over the 5th Circuit's heads; hence *Stearman*. But, between the Wallis case (Tax Court), and the Florance case (5th), both unpublished, it's clear there's a new attitude, perspective and demeanor in the Tax Court and 5th Circuit.

Argument

Remedies Requested

Vacate.

There being no lawful trial "judgment" ***to*** affirm, the "judgment" on appeal is properly vacated. Respondent never proved its standing and has disclaimed (by viciously vituperating Stearman). The TCRs apply only to Respondent's benefit; the "judgment" defies the only ***evidence*** of Record; and the blatant bias has triggered *Liljeberg*, rendering VASQUEZ without authority to participate, at all; his "judgment" is facially void.

Enter "take nothing" judgment.

Respondent never rebutted Stearman's evidence, and its improperly joined and incompetent motion***S*** are properly struck. Thus, Stearman is entitled to a "take nothing" judgment on the pleadings.

IRC § 6673 Penalties.

The *courts* owe Stearman § 6673 penalties.

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[8] No. 05-90 (cert. denied, but no sanctions requested or granted; no "Affirmance" requested or granted).

[9] No. 05-186 (cert. denied, but no sanctions requested or granted; no "Affirmance" requested or granted).

Discussion

Due Process—No Discovery

1. Did VASQUEZ violate Due Process by consolidating the two cases such that the discovery period ended before it began?

See IRC § 7458; *Boddie*; *Miller* (the 8th Circuit discussed two bedrock Due Process points: (1) neutral forum and (2) presentation of the merits of the case).

Due Process—No Evidence, No Claim

2. Does IRC § 7459(d) allow "no-evidence-required" judgments?

No judgment stands without evidence.

Cf. FED. R. APP. P. 10(b)(2). *See, generally*, IRC § 7458; *Miller*, 654 F.2d at 521; and *Boddie*. Since Due Process survived even 11 September 2001, ***no*** statute may ***ever*** allow a judgment to stand without evidence.

IRC § 7459(d) has *two* sentences, not just one.

Per common sense and ancient reasoning, or where that fails, per the *second* sentence of § 7459(d), the Record ***must*** contain evidence supporting the final judgment. The first sentence does not negate the second, *or* Due Process, *or* trust law, *or* the Rules of Civil Procedure.

Where's the evidence *supporting* the "judgment?"

The only evidence of Record is found in Stearman's verified petitions. *O'Connor* (unrebutted evidence is accepted as true). ***Nothing*** about either verified petition ***supports*** VASQUEZ's "judgment."

Burden of proof—It rests *first* on the *beneficiary*.

Unless and until the alleged beneficiary satisfies its ***threshold*** burden of proof, Stearman has no burden *to disprove* anything, i.e., there's no point in any "trial."

See Pollock I, 157 U.S. at 553-54; TCRs 34(b)(4), 36;

White Mountain Apache, 249 F.3d at 1370-71 (Tribe – claimed breach of fiduciary duty; "United States" moved, per 12(b)(6), to dismiss; granted by trial court; reversed on appeal); *FDIC v. Barton*, 104 F.3d at 701-02; *Conkling*; *C&B Sales*; BOGERT § 50 at 102, § 871 at 156 and nn.2, 3 (where beneficiary fails to prove damages, there is no recovery). *See also* IRC § 6020(b) (the numerics submitted are not even subscribed); *Crawford* (where there is no evidence even offered, Stearman is deprived his right to cross-examine); *O'Connor* (unrebutted evidence is accepted as true); *Assoc'd Gen. Contractors*, 508 U.S. at 668-69 (unrebutted allegations accepted as true); BOGERT § 50, at 108, § 170, at 205, 207 (Proof of Acceptance or Disclaimer), § 172, at 227-28 (nunc pro tunc consequences of vilifying Stearman for his demanding ***evidence***, etc.).

Where's the claim?

For a court to award *affirmative* relief, at all, not only must there be evidence, but also there must first be pleadings asserting such claim. *See* FED. R. CIV. P. 13 (compels counterclaims), 15 (trial of issue works de facto nunc pro tunc amendment of pleadings); BOGERT §§ 170-72 (disclaimer and its effect); TCRs 30 (prohibits counterclaims), 36 (requires counterclaim via misnomer), 37 (Reply allowed/required for required misnomer counterclaim via Answer); *Dishman* (claims and defenses are *very* different); and *Janis*, 428 U.S. at 438 n.5. (in *federal* court, counterclaims used to be standard operating procedure). And, *this* "judgment" finds neither pleadings *nor* evidence in support!

Conclusion—No evidence *supports* the "judgment."

Nothing about § 7459(d) allows a "no-evidence-required," "no-pleading-required" judgment.

But, based on (1) no affirmative claim for relief, (2) no evidence and (3) motion**S** that are frivolous and improperly joined, VASQUEZ entered judgment *for Respondent*, and the 5th Circuit, giving VASQUEZ 100% support and encouragement, joined in vaporizing the law.

STATUTORY CHALLENGE

3. If so, does IRC § 7459(d) violate Due Process?

Due Process compels evidence.

It's legally impossible for ***any*** judgment to stand without evidence. ***Any*** statute that purports to suggest otherwise violates Due Process and is void on its face.

The problem is not with § 7459(d).

The problem is with the Tax Court and the 5th Circuit. The Tax Court read what they want and then just stop reading. They do this with TCR 34(b)(4) and (5), and they do this with § 7459(d). There is more to TCR 34(b)(4) and (5) than they've applied, and § 7459(d) has *two* sentences.

On the one hand, abusive application of a statute that otherwise has no problem ruins the statute. *See Yick Wo* (race-neutral statute enforced by unequal policy (against Chinese) violates Equal Protection). But, on the other, a problematic statute, properly construed, is salvaged. Thus, if the *Tax Court and 5th Circuit* read § 7459(d) properly, then it's void on its face. If *Stearman* reads it properly, then the statute is fine, and the Tax Court and 5th Circuit should be censured and sanctioned.

Equal Protection—Tax Court Rules

4. Does TCR 54 restrict petitioners only?

Equal Protection Violations.

As simply a list of examples, the following areas have Equal Protection standards:

(1) racial bias, e.g., *Johnson* (racial bias in prison segregation policy);

Grutter (law school admissions policy, "reverse discrimination");

Hopwood (law school admissions policy, "reverse discrimination");

Miller v. Johnson (race-based gerrymandering of congressional districts);

Adarand Constructors, Inc. (race-bias in government contracting);

Powers (citing *Batson*) (racial bias in preemptory strikes in jury selection);

Bakke (medical school admissions policy, "reverse discrimination");

Jones v. Mayer Co. (fair housing policy);

Loving v. Virginia (state antimiscegenation statute);

Bolling v. Sharpe (public school segregation);

Brown v. Board of Education of Topeka (disallowed statutory segregation for public facilities);

Hernandez v. Texas (regarding racial bias in preemptory strikes in jury selection);

Shelley v. Kraemer (restrictive covenants, fair housing policy);

Plessy v. Ferguson (allowed statutory segregation on railway cars);

Yick Wo (race-neutral statute enforced by unequal policy (against Chinese) violates Equal Protection);

Strauder (excluding blacks from the jury);

Dred Scott (race and citizenship);

(2) gender bias, e.g., *United States v. Virginia* (VMI's all-male admissions policy);

J.E.B. v. Alabama ex rel. T. B. (gender bias in preemptory strikes in jury selection);

(3) age bias, e.g., *Gregory*) (state judge retirement age);

(4) sexual orientation bias, e.g., *Romer v. Evans* (striking down Colorado's Amendment 2 referendum);

Lawrence v. Texas (striking down Texas' sodomy law);

Nabozny (failure to prevent orientation-based harassment in public schools);

(5) campaign finance bias, e.g., *McConnell* (political parties *vis-à-vis* special interest groups, "soft money" v. "hard money" campaign financing regulations);

(6) right to die, e.g., *Vacco* (assisted suicide statutes);

(7) state taxation, e.g., *Gen. Motors Corp., v. Tracy* (in-state and out-of-state differential rate differences);

Nordlinger v. Hahn ("acquisition value" basis for real estate taxation system);

San Antonio Indep. Sch. Dist. v. Rodriguez (funding of public school system);

(8) mental "commitment," e.g., *Heller v. Doe* (evidentiary standard differences);

(9) evidence gathering, e.g., *Ferguson v. City of Charleston* (non-consensual blood testing of suspected drug-addict pregnant women);

(10) commercial bias, e.g., *Carolene Products Co.* (health-based restriction on commerce);

(11) malapportionment, e.g., *Reynolds v. Sims*; *Baker v. Carr*;

(12) immigration policy, e.g., *Francis v. INS* (noncitizen penalized based upon the chance timing of departure from the United States); and

(13) irrational governmental action, e.g., *Village of Willowbrook v. Olech* ("class of one" fully recognized where intentional, irrational, reproducible governmental action is involved).

Irrational, intentional governmental action.

The irrational, intentional governmental action theory applies, and Stearman is a "class of one." If he's not a "class of one," it's because he's a member of the class of *pro se* Tax Court petitioners who ***demand*** that the alleged beneficiary (A) satisfy its threshold burden of proof, or (B) withdraw its claim. To date, neither has occurred. Whether Stearman was singled out or is a member of a larger class, Stearman's "injury in fact" is the same. At "trial" *and* on appeal, the procedural, e.g., TCR 54, and substantive law applied ***not at all!***

Where Tello (5th), Stearman (5th), Florance (5th), Wallis (5th) and O'Connor (9th), have compelled the Tax Court to follow the law, so far, FOLEY, alone, in the Wallis case, was lawyer enough to go back to the law library.

Conclusion—Two-way street or no street.

TCR 54 restricts equally or not at all. Respondent

filed improperly joined motion**S**, but TCR 54 doesn't limit Respondent; only Stearman.

VASQUEZ's application of TCR 54 quite clearly violates both Equal Protection and Due Process. VASQUEZ denied Stearman both meaningful access and a meaningful opportunity to be heard. IRC § 7458. This is what happens when the law is not applied equally, i.e., when the "judges" become *parties* to the case.

Epilog—Part 1.

Since TCR 54 doesn't restrict Respondent, it doesn't restrict Stearman. The motions that VASQUEZ struck are properly restored to the Record, and, where still appropriate, granted.

Epilog—Part 2.

Since Respondent rebutted no evidence, Stearman's motion for judgment on the pleadings should be granted.

Due Process—Ethics, Sanctions

5. Should VASQUEZ have self-recused? If so, is *Liljeberg* satisfied?

VASQUEZ should have self-recused.

No one is lawfully compelled to trial in a kangaroo court. 28 U.S.C.A. § 455(a). VASQUEZ proclaimed his bias and his proclivity toward lawlessness in these ways:

- He struck, or "unfiled," 14 of Stearman's documents without basis or justification.
- He did this "unfiling" by way of two "secret orders," thus, without any order of Record, or any other form or type of Notice of Record.
- He refused to strike, instantly and *sua sponte*, *Respondent's* improperly joined motion**S**. But, *Stearman's* joined motion**S**, were struck.
- He completely obstructed all remote possibilities of Stearman's engaging in discovery.
- He denied Stearman's motion for judgment on the pleadings, even though Respondent's frivolous motion**S** are properly struck *sua sponte*, and

Respondent never rebutted Stearman's verified petition in either case.

- Despite no evidence or claim for affirmative relief, he granted affirmative relief to Respondent.
- He ***sanctioned*** Stearman for his demanding that the law be applied and followed.
- He has so defied his oath of office, the ancient law of this state, "his own" rules, Due Process and Equal Protection as to multiply vexatiously and with scienter this litigation.

Liljeberg is satisfied.

A reasonably objective person can conclude that any "judge" who violates "his own" rules, Due Process and Equal Protection, and then ***sanctions*** litigants who assert the very *same* law to which that "judge" swore an oath, is sufficiently partial to be disqualified from that case. Where recusal should have happened, but didn't, the decision to vacate analyzes these three factors:

- "the risk of injustice to the parties in the particular case[;]"
- "the risk that the denial of relief will produce injustice in other cases[;] and"
- "the risk of undermining the public's confidence in the judicial process."

Liljeberg, 486 U.S. at 864.

RISK OF INJUSTICE TO STEARMAN.

The risk of injustice is high to ***any*** party where the "judge" bends over backwards to defy all law in sight in order to rule against that party. To ***sanction*** a party for arguing the law is to shock the conscience. Where any "judge" characterizes the law, itself, as "*frivolous and groundless*," risk of injustice screams from the page.

RISK OF INJUSTICE IN OTHER CASES.

Injustice in other cases via this exact same approach has already occurred. Further, where a "judge" ***sanctions*** a party ***for arguing the law***, it's ***impossible***

for that not to affect other cases, as is already proved.

RISK OF UNDERMINING PUBLIC CONFIDENCE IN JUDICIAL PROCESS.

Stearman expects that few things are more horrific to the American people than "judges" who are so biased and malicious that they overtly violate their court's very own rules, slander the law, generally, by sanctioning those who argue the law, and defy Due Process and Equal protection openly ("Stop us if you think you can!"). There may even be a group of U.S. citizens who would find such "judges" horrific. How this might *undermine* confidence in the Tax Court, which starts at "no confidence," is a good question. But, *Liljeberg* does not "grandfather in" historic and habitual abuses as exceptions or defenses.

Conclusion.

VASQUEZ should have self-recused, and didn't. The *Liljeberg* standard is more than satisfied. The "final judgment" is properly vacated.

6. How do the Tax Court and the 5th Circuit avoid paying Stearman penalties per § 6673?

Pro Se's, the excluded class of litigants.

What's good for the goose is good for the gander.

WHO—ALL BAD ACTORS.

Train car loads of "penalties" exist to "correct" the "wayward" "taxpayer." Virtually nothing exists to correct systemic abuse by the Secretary, *see* IRC § 7430, and even less exists to correct systemic abuse by the trial and appellate courts. The "remedies" that *do* exist are connected with "attorneys fees," *see, e.g.*, § 6673(a)(2)(B), leaving the entire class of *pro se* litigants without an effective remedy, and that in a dispute-resolution system *designed entirely around the pro se litigant*. On its own, the Equal Protection problem manifestly declares itself.

It is impossible to conceive that congressional policy would be (A) to *create* a biased forum, in whole, much less

in part by deliberately singling out an entire class of litigants, the *pro se*'s, for special, Due-Process-defying, treatment, much less (B) to deny sanctions, *especially* in the face of irrational, intentional, reproducible, unequal governmental action and conduct. Therefore, it follows that the congressional policy is to penalize the *conduct* proscribed, *including* that conduct where a "jurist" is the principal. *Cf.* § 6673(a)(2) ("any attorney or other person admitted to practice law before the Tax Court").

WHAT—ALL VEXATIOUS MULTIPLICATION OF PROCEEDINGS.

The conduct at issue is vexatious multiplication of the proceedings. *Cf.* 28 U.S.C. § 1927. Law-defying, utterly and facially meritless, vindictive judicial activity vexatiously multiples proceedings, thereby bringing such activity within § 6673. We're ***way*** beyond "debatable" on these issues. The judicial "officers" are not simply errant, or simply abusing reasoned discretion. Despite ***all*** of Stearman's good faith, due diligence ***and*** full disclosure, they are flat out defying every applicable procedural and substantive law in sight. This tends to reinforce Stearman's reading of § 6673, namely that it limits only a *"taxpayer's"* upper limit to $25,000, not the Secretary's, not DOJ's, and not any "jurist's," regarding which upper limit § 6673 is silent. For them, the penalty is limited only by "punishment that fits the conduct."

Equalize the playing field.

If Stearman is subject to a financial hammer for being "frivolous and groundless," then how do the "jurists" who make themselves parties avoid that same hammer? Where economic/financial measures are found suitable to bring the (falsely) *accused* into awareness of the law, are such measures not just as suitable to bring those who issue wholly meritless rulings back into line? Where the ABA-approved curriculums, and licensing exam programs, and the CLE programs *and* the trial and

appellate courts, compel the ***pro se*** to supplement this Court's continuing legal education program, those CLE hours are not "free of charge," for they are not sponsored by any bar association.

VASQUEZ, *and* the 5th Circuit panel, have ***all*** vexatiously and unreasonably multiplied these proceedings. In addition to a "tax" bill of $0, Stearman is entitled to § 6673 penalties from VASQUEZ, and from the 5th Circuit, in the amount of the total amount "ordered" due, plus interest, *plus* a minimum of $25,000 per level of litigation (this is the third level) whether individually, or jointly and severally with each "bad actor," including UNITED STATES OF AMERICA.

Conclusion.

Both the present legislative policies and their horrifically biased application violate Equal Protection. There are no similar penalty provisions protecting *pro se*'s who are victimized by "frivolous and groundless" "jurists." However, § 6673 does apply for "tax" cases. And, what's good for the goose is good for the gander.

Conclusion

No discovery allowed?—No access to the court!

Where VASQUEZ bent over backwards to ***prevent*** discovery, and where READ, with the IRS Chief Counsel's Office, committed fraud on the Tax Court in order to ***prevent*** discovery, VASQUEZ and READ openly and with scienter denied access to the court and rendered impossible a meaningful opportunity to be heard.

No evidence; no claim?—No "judgment!"

The only evidence of Record are Stearman's verified petitions. COMMISSIONER never asserted a claim, never proved itself a beneficiary, or an agent of such, or that Stearman was a fiduciary, and never proved that there was any remote relationship between COMMISSIONER and Stearman. ***Nothing*** about

§ 7459(d) supplies either pleadings ***or*** evidence. ***Nothing*** about this Record *supports* the "judgment."

TCR 54 applies equally or not at all.

COMMISSIONER's incompetent, sanctionable and improperly joined motion**S** are properly struck *sua sponte*, for violation of TCR 54.

Due Process and Equal Protection will prevail.

Judgment on the pleadings, that COMMISSIONER "take nothing," is proper.

Complete obstruction of discovery—Direct Conflict with Federal Standards.

The 5th Circuit have failed to correct VASQUEZ's obstructionist conduct toward discovery. Thus, the 5th Circuit have entered an opinion that (1) conflicts with (A) the foundational law of this state, (B) longstanding federal statutory provisions, (C) the Rules of both the Tax Court and of all federal trial courts, (D) relevant decisions of this Court, (E) relevant decisions of other courts of appeals, (F) relevant decisions even of the 5th Circuit, and (2) so far departs from the accepted and usual course of judicial proceedings, and sanctions (i.e., encourages) the same departure by the Tax Court, as to call for the exercise of this Court's supervisory power.

Void "judgment;" no evidence, no claim—Direct Conflict with Federal Standards.

The 5th Circuit have upheld the Tax Court's no-pleading-required, no-evidence-required, TCRs-don't-matter, Due-Process-doesn't-matter, Equal-Protection-doesn't-matter "judgment." Thus, the 5th Circuit have entered an opinion that (1) conflicts with (A) the truth, (B) the Record, (C) the ancient Common Law and additional foundational law of this state, (D) longstanding federal statutory provisions at the very foundation of this state, generally, and the "tax" system, in particular, (E) relevant decisions of this Court, (F) relevant decisions of other courts of appeals, (G) relevant decisions even of the 5th Circuit, and (2) so far departs from the accepted and usual

course of judicial proceedings, and sanctions (i.e., encourages) the same departure by the Tax Court, as to call for the exercise of this Court's supervisory power.

Statutorily-justified no-evidence-required "judgments"—Important Question of Federal Law.

Whether IRC § 7459(d) allows a no-evidence-required "judgment," or a "judgment" that manifestly goes against the ***only*** evidence, thus openly violates Due Process, is an important question of federal law that has not been, but should be, decided by this Court.

Overtly biased application of TCR 54—Important Questions of Federal Law.

Whether TCR 54 restricts petitioners only is an important question of federal law that has not been, but should be, decided by this Court.

Refusal to self-recuse—Direct Conflict With Federal Standards.

By supporting, and refusing to correct, the *plethora* of errant judicial activity and rulings by VASQUEZ, thus by not applying § 455(a) to VASQUEZ, thus by not applying *Liljeberg*, thereby overtly *approving* the VASQUEZ kangaroo court, the 5th Circuit have (1) entered an opinion that conflicts with relevant decisions of this Court and with relevant decisions of other courts of appeals, and even their own, and (2) so far departed from the accepted and usual course of judicial proceedings, and have sanctioned (manifestly encouraged) the same departure by the Tax Court, as to call for the exercise of this Court's supervisory power.

Trial or appellate jurist liable to party per § 6673—Important Question of Federal Law.

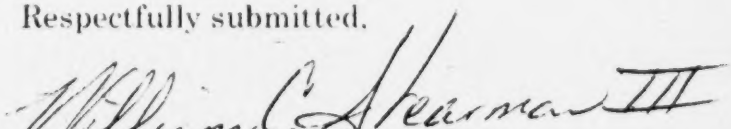
And, whether federal trial and appellate "jurists" are liable under IRC § 6673 to litigants for judicially-spawned vexatious multiplication of "tax" proceedings is an important question of federal law that has not been, but should be, decided by this Court.

Remedies Requested

Stearman requests

1. That this Court grant the petition, issue the writ of certiorari and take jurisdiction of this matter.
2. That the "judgment" on appeal be vacated; ultimately, that the trial court "judgment" be vacated; and that judgment on the pleadings be entered for Stearman, that Respondent take nothing.
3. A declaration that TCR 54 restricts both sides equally or applies not at all.
4. A declaration that IRC § 7459(d) does not allow any no-evidence-required "judgments," or any "judgments" that defy the ***only*** evidence of Record.
5. A ruling that VASQUEZ should have self-recused, and that per *Liljeberg* the "judgment" is vacated, or, better, reversed.
6. IRC § 6673 penalties in his favor, *from the courts.*
7. The opportunity to brief any additional issues the Court identifies for such.
8. The non-argument calendar.
9. That costs be taxed to the Tax Court and 5th Circuit. And,
10. Any and all other relief at law, in equity or sui generis to which he may show himself justly entitled.

Respectfully submitted,



William C. Stearman, III
Without prejudice
506 South Denton Tap Road
Coppell, Texas [75019]

Appendix A
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2006 Jan 13

United States Court of Appeals
Fifth Circuit
FILED
January 13, 2006
Charles R. Fulbruge III
Clerk

Revised January 19, 2006

In The
United States Court of Appeals
for the Fifth Circuit

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m 05-60521
Summary Calendar

WILLIAM C. STEARMAN, III,
Petitioner-Appellant,

VERSUS

COMMISSIONER OF INTERNAL REVENUE,
Defendant-Appellee.

Appeal from a Decision
of the United States Tax Court

Before SMITH, GARZA and PRADO,
Circuit Judges.

PER CURIAM:

William Stearman, III, *pro se*, appeals the judgment of the United States Tax Court dismissing his two consolidated cases for failure to state a claim and failure to prosecute and sanctioning him $12,500 per case under 26 U.S.C. § 6673 for advancing frivolous positions and

maintaining the proceedings primarily for delay.[1] Stearman also requests damag[-] [12] es under § 6673 against the Tax Court judge and opposing counsel in an amount "at least equal to the amount of the 'judgment.'" We affirm and grant the Commissioner's motion to impose sanctions for maintaining a frivolous appeal.

I.

We review *de novo* the dismissal for failure to state a claim, *Lowrey v. Tex. A & M Univ. Sys.*, 117 F.3d 242, 246 (5th Cir. 1997), and review for abuse of discretion the dismissals for failure to prosecute and the imposition of sanctions under § 6673, *Tello v. Comm'r*, 410 F.3d 743, 744 (5th Cir.), *cert. denied*, 126 S. Ct. 381 (2005). Dismissals with prejudice for failure to prosecute are proper only where (1) there is a clear record of delay or contumacious conduct by the plaintiff and (2) the district court has expressly determined that lesser sanctions would not prompt diligent prosecution, or the record shows that the district court employed lesser sanctions that proved to be futile. *Tello*, 410 F.3d at 744.

In most cases, a plain record of delay or contumacious conduct is found if one of the three aggravating factors is also present: (1) delay caused by the plaintiff; (2) actual prejudice to the defendant; or (3) delay as a result of intentional conduct. *Id.* In *Tello*, we found that the Tax Court had properly dismissed the case because of the plaintiff's (1) failure to appear at the calendar call and recall of his case; (2) failure to cooperate with the Commissioner in preparing a stipulation of facts; (3) refusal to address the merits of the case; (4) wilful ignorance of warnings to stop making frivolous

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[1] On the certificate of service in his appellate brief, Stearman styles himself as a "moron *pro se* from hickville Texas" and urges this court to decide whether he "knows more about the tax sys- (continued...) [12] (...continued) tem" than do the Commissioner's "educated" and "vastly experienced" attorneys.

arguments; and (5) wasting the time and resources of the Tax Court. *Id.*

Stearman, like the plaintiff in *Tello*, failed to appear at the call of the consolidated cases despite being sent a notice setting the case for trial and stating that "[HIS] FAILURE TO APPEAR MAY RESULT IN DISMISSAL OF THE CASE AND ENTRY OF DECISION AGAINST [HIM]." Stearman did not explain his non-appearance.

Also, like the plaintiff in *Tello*, Stearman failed to cooperate in that he refused to comply with the Tax Court's order to file, with that court, his requests for admissions. The notice setting the case for trial stated that "[HIS] FAILURE TO COOPERATE MAY ALSO RESULT IN THE DISMISSAL OF THE CASE AND ENTRY OF DECISION AGAINST [HIM]." Stearman served a request for admissions on the government without filing it with the Tax Court. The request asked the government to admit that "'Taxpayer' means fiduciary," that the "'United States' is a federal corporation," and that the "'UNITED STATES OF AMERICA' is another federal corporation." The Tax Court ordered Stearman to file the request with the court, as required by Tax Court Rule 90(b).

Instead of cooperating by complying with the order, Stearman filed a "status report" asking "YOU WANT WHAT? BY WHEN? If you haven't figured this out yet, the olive branch has been withdrawn" and stating "Vasquez, [2] you've lost your mind! Go butt a stump!![3] The "status report" also called the [13] Tax Court a "kangaroo

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[2] Judge Vasquez is the Tax Court judge presiding over the case.

[3] Earlier, after the Commissioner had filed an (continued...) [13] (... continued) answer in No. 20928-03, Stearman also filed a "status report" stating that "[u]pon receipt of the Answer, Petitioner respectfully declines to animate the person, capacity or usage proposed by Respondent, and he is content to await notice of any sua sponte activity relevant to this matter."

court" and stated that taxpayer "has absolutely no intention of 'returning' or 'refiling' those original discovery documents ... given that those documents are now evidence for the pending criminal investigation of what may involve a whole stinking group of you people.'"[4] Stearman explained that he would not "refile" the requests of admission with the Tax Court because the "insane tampering with the Record epidemic that runs amuck in the Tax Court is not Petitioner's problem."

Further, in retort to the Commissioner's motion to dismiss for failure to state a claim, Stearman filed a response, also including an "Anticipatory Rule 60(b) Motion," which did not address the merits of the motion to dismiss but asserted that the Tax Court judge "is incompetent and biased and has no authority, whatsoever," and that the judge had not allowed sufficient time to respond to the motion to dismiss.[5] The response

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[4] The day before he filed the status report, Stearman filed a "Probable Cause Affidavit" with the Tax Court that alleged various criminal acts committed by the court, objected to Tax Court rules, requested "production" of Judge Vasquez, and submitted "interrogatories" directed to the judge.

[N.B.: No. 20928-03: [4]—nn.3-4 Status Report (S.R.) (13 Feb 04); [6.08]—*second* S.R. (20 Sep 04) ("Petitioner has delivered proposed stipulations to Respondent."); [14]—n.4 Probable Cause Affid. (23 Nov 04); [15]—*third* S.R. (24 Nov 04). WmCS]

The affidavit and several other documents filed by Stearman in the Tax Court contained the following heading: "UNITED STATES TAX COURT (a federal corporation, committing criminal acts under disguise of providing professionally incompetent arbitration services, while doing business in 'this state' via a tax exemption certificate."

[5] The motion to dismiss was filed on November 2, 2004. On November 18, 2004, the Tax Court ordered Stearman to file, by November 29, 2004, a response to the motion to dismiss and set the motion for a hearing at the previously-scheduled trial session set for December 6, 2004. Stearman argued that he received this order on November 22, 2004, and because of the Thanksgiving holiday he had only "two days" to respond. Stearman, however, was served with the motion to dismiss filed on November 2, 2004. Therefore, he had at least three weeks to prepare a response by November 29, 2004.

stated that the Tax Court's order to respond was "completely unlawful and mindless" and characterized the motion to dismiss as "utterly and facially sanctionable crap."[6]

It is evident that Stearman engaged in a pattern of delay and contumacious conduct before the Tax Court and that the delay was caused by his personal and intentional conduct. He expressly refused to file items required by the court's rules and an explicit court order, [⊥4] although he had been warned that the sanction for failure to cooperate could be dismissal.

Stearman also failed to appear at trial although he had been warned that the sanction for this action could also be dismissal. In his response to the motion to dismiss, he refused to address the merits of the motion, but rather insulted the judge. His insults to the judge, opposing counsel, and the Tax Court, and his general contempt and defiance of the court's authority and accusations of criminal conduct are intentional, not mistakes or oversights. As we explained in *John v. Louisiana*, 828 F.2d 1129, 1131 (5th Cir. 1987), it is not a party's negligence, regardless of how careless or

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[N.B.: The time between receiving the conscience-shocking "order" *to* respond to improperly joined motion*S*, which should never have been allowed filed, and the proposed deadline is exactly as described. WmCS]

Further, had he filed for an extension, rather than filing a response insulting the presiding judge, the extension could have been granted.

[6] The response contended that the government could not file a motion to dismiss for failure to state a claim nine months after it filed a responsive pleading because, under Federal Rule of Civil Procedure 12(b), such a motion must be made "before pleading if a further pleading is permitted." This argument lacks merit. As explained in Federal Rule of Civil Procedure 12(h), which deals specifically with waiver or preservation of certain defenses, a defense for failure to state a claim "may be made in any pleading permitted or ordered under [Federal Rule of Civil Procedure] 7(a), or by motion for judgment on the pleadings, or at the trial on the merits."

inconsiderate, that makes conduct contumacious; instead, it is "the stubborn resistance to authority" that justifies a dismissal with prejudice.

Moreover, Stearman's frivolous arguments, insults, failure to cooperate and other dilatory practices wasted the Tax Court's resources. Because Stearman was *pro se*, he was also personally responsible for the delay.

Given the obstinate and harassing nature of Stearman's conduct, including his wilful failure to cooperate and to appear at trial despite the judge's explicit warnings, it is apparent from the record that lesser sanctions were futile.[7] Therefore, the dismissal for failure to prosecute is proper under *Tello*, 410 F.3d at 744.[8]

We also affirm the dismissal for failure to state a claim. Whatever arguments Stearman may have on appeal on why dismissal for failure to state a claim was improper are waived because he did not raise them in his invective-filled response to the motion to dismiss.[9]

We also agree with the Tax Court that Stearman "has advanced shopworn arguments characteristic of tax-protester rhetoric that has been universally rejected by this and other courts." T.C. Memo 2005-39. Stearman appears to have borrowed his theories and litigating strategy from the taxpayer in *Tello v. Comm'r*, 143 Fed.

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[7] *See Rogers v. Kroger Co.*, 669 F.2d 317,323 (5th Cir. 1982) (noting that lesser sanctions include, among others, explicit warnings).

[8] See also TAX COURT R. 123(b) ("For failure of a petitioner properly to prosecute or to comply with these Rules or any order of the Court or for (continued...)

(...continued) other cause which the Court deems sufficient, the Court may dismiss a case at any time and enter a decision against the petitioner.").

[9] *See Little v. Liquid Air Corp.*, 37 F.3d 1069, 1071 n.1 (5th Cir. 1993) (en banc) (per curiam) (explaining that court of appeals will not consider evidence or arguments that were not raised in district court).

Appx. 568 (5th Cir.) (per curiam), *cert. denied*, 126 S. Ct. 667 (2005). [10]

As with Stearman, the plaintiff in *Tello* did not deny receiving the income stated in the notice of deficiency or the fact that he did not file a tax return for the years at issue. Also as here, Tello alleged that the notice of deficiency was improper because (1) the accounting method the Commissioner employed was not as suitable as Tello's preferred accounting method; (2) the Commissioner is not permitted to provide accounting services in the State of Texas; [11] (3) the Commissioner is not permitted to practice law in the State of Texas; [11] and (4) the taxpayer has no "fiduciary obligation" to [⊥5] pay taxes to the Internal Revenue Service.[12] *Id.* In *Tello*, we affirmed the Tax Court's dismissal for failure to state a claim, labeling the claims as "patently frivolous."[13] For the

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[10] **[N.B.: "Shopworn" arguments (1) would have a known and documented history, (2) that is *far* more dated in origin than the immediate trial court decision. WmCS]**

[11] **[N.B.: Not "State of Texas," but "this state." Is it a Due Process (vagueness) problem, systemically, where even the jurists have no idea "where" they are? WmCS]**

[12] [n.10 in the original]. Although, on appeal and in various filings with which he inundated the Tax Court, Stearman also challenged the constitutionality of various Tax Court rules and asserted violations of due process and equal protection by Judge Vasquez. Stearman's complaint makes only the four claims discussed above.

[N.B.: Stearman never once raised *any* question of the *"constitutionality" of anything*. WmCS]

[13] [n.11 in the original.] In *Tello*, 143 Fed. Appx. at 569-70, the court held as follows:

It is clear that Tello's petition was the proper subject of a dismissal for failure to state a claim. Petitions in the Tax Court are governed by TAX CT. R. 34(b)(4), which states that a petition must contain: "Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency or liability .... Any issue not raised in the assignments of error shall be deemed to be conceded." The assignments of error Tello made in his petition for redetermination

same reasons, we affirm here.

Furthermore, the Tax Court did not abuse its discretion in sanctioning Stearman $12,500 per case under § 6673(a), which allows sanctions where a taxpayer institutes or maintains a proceeding primarily for delay or his position in the proceeding is frivolous or groundless. As discussed above, Stearman failed properly to prosecute his case, which indicates that he maintained the proceedings primarily for delay, and his position in the proceeding was utterly frivolous.

II.

The Commissioner moves in this court to sanction Stearman $6,000 for maintaining a frivolous appeal so that the government can be compensated for the cost of defending this appeal. Stearman has not responded to the motion; his main arguments on appeal are the same frivolous ones he advanced in the Tax Court.

As we recently cautioned in *Tello*, 410 F.3d at 745, a party who continues to advance long-defunct arguments invites sanctions.[14] Sanctions on pro se litigants are

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were patently frivolous. The heart of Tello' s argument in the Tax Court was that the CIR has no authority to collect tax revenue. It is manifest that the CIR and the IRS have the authority to collect tax revenue by virtue of the Internal Revenue Code. *See* I.R.C. §§ 7801-7804 (2000). Thus, his primary assignment of error was plainly without merit. Furthermore, it is evident that by virtue of promulgating official tax documents, the CIR has not engaged in the unauthorized practice of accounting or law. We have previously upheld the Tax Court's dismissal of petitions for redetermination under Rule 34(b)(5) for failure "to allege any justiciable error in the determinations upon which the notice of deficiency was based or any facts tending to support any such error." *Sochia v.* (continued...)

(...continued) *Comm'r*, 23 F.3d 941, 943 (5th Cir. 1994). Accordingly, we affirm the Tax Court's dismissal of Tello's petition for redetermination.

(Ellipses in original.)

[14] [n.12 in the original.] *See also Parker v. Comm'r*, 117 F.3d 785, 787 (5th Cir. 1997) (noting that despite the warning "that their claims

appropriate if [16] they were warned, as Stearman was, that their claims are frivolous and if they were aware of "ample legal authority holding squarely against them." *Stelly v. Comm'r*, 761 F.2d 1113, 1116 (5th Cir. 1985) (per curiam) ("Although a court can demand a higher degree of responsibility from members of the bar, litigants cannot be treated as free to advance frivolous claims merely because they appear without counsel."). Because Stearman explicitly questions the wisdom of the *Tello* cases in his brief, he must have been aware that the *Tello* cases rejected the theories that he advanced as patently frivolous.[15] We accordingly grant the motion for sanctions of $6,000 for pursuing a frivolous appeal pursuant to 26 U.S.C. § 7482(c)(4), 28 U.S.C. § 1912, and Federal Rule of Appellate Procedure 38.[16]

Moreover, because the sanctions imposed by the Tax Court (cumulatively $25,000) did not deter Stearman from pursuing the same frivolous arguments on appeal, we impose *sua sponte* an additional sanction of $6,000. See 28 U.S.C. § 1912; FED. R. APP. P. 38. As pointed out in *Coghlan*, 852 F.2d at 808 & n.1, "there is no question that the courts of appeals have the ability to impose sanctions *sua sponte*." As we warned in *Stelly*, 761 F.2d at 1115-16, sanctions greater than reasonable attorney's fees and double costs may "be imposed under appropriate circumstances." In *Stoecklin v. Comm'r*, 865 F.2d 1221

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were meritless, the Parkers filed the present appeal in which they continued to maintain that the entire Tax Code is an elaborate 'fraud' designed to 'catch the naive"); *Coghlan v. Starkey*, 852 F.2d 806 (5th Cir. 1988) (per curiam).

[15] [n.13 in the original.] *See infra* note 16 [n.18 as edited].

[16] [n.14 in the original.] *See Tello*, 410 F.3d at 745 (awarding the same amount in a case where petitioner advanced similar arguments); Parker, 117 F.3d at 787 (approving the practice of imposing a lump sum sanction in lieu of costs because it "saves the government the additional cost of calculating its expenses, and also saves the court the time and expense of reviewing the submission of costs").

(11th Cir. 1989), for example, the court doubled *sua sponte* the amount of lump-sum appellate sanctions requested by the Commissioner because the circumstances indicated that higher damages were appropriate.[17]

The extraordinary circumstances of this case indicate that greater sanctions are called for. Stearman knew that this court had dismissed similar arguments as frivolous in the *Tello* cases, as shown by Stearman's offensive insinuations with respect to this court's alleged lack of preparation in those cases.[18] He was also warned by the Tax Court that his arguments are frivolous. Yet on appeal, rather than explaining why the Tax Court committed error, Stearman restated the myriad of claims with which he inundated the Tax Court and added insults to the address of the Tax [⊥7] Court,[19] and, as discussed above, of this court. Stearman's contempt for the judicial

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[17] [n.15 in the original.] *See also Billman v. Comm'r*, 847 F.2d 887 (D.C. Cir. 1988) (finding that the tax protester's reassertion of the very claims for which he was previously sanctioned warranted doubling of earlier sanction).

[18] [**n.16** in the original]. In his appellate brief, Stearman appears to insinuate that this court is **[sic WmCS]** incompetent:

> It's difficult to figure how this court could both (A) know the legal reality of the "federal income tax system" and (B) press these matters to the extent this court have [sic] pressed them. Upon review of this court's decisions in the Tello cases, it's very clear that a review of the "naked case" is necessary.

Similarly, Stearman also insinuates that this court has **[sic WmCS]** not afforded tax litigants adequate consideration: "There is no amount of sanctions or penalties that will ever change the law or make up for this court's well-demonstrated disinclination to study these matters."

[19] [n.17 in the original.] Stearman argued in his appellate brief that the Tax Court is a "kangaroo court the likes of which are rather difficult to match." He also states that "Vasquez is completely in the dark regarding the legal mechanics of the 'federal income tax system.' That may go a long way to explain his maniacal conduct in this matter. Either way, a real judge doesn't do what Vasquez does."

system[20] further demonstrates that he did not institute the proceedings in good faith, but merely to harass the collection of public revenues.

The $12,000 in sanctions is modest compared to the amount of unpaid taxes Stearman owes for 1999, 2000 and 2001, which exceeds $280,000. Although Stearman styles himself as a "moron pro se from hickville Texas," his annual income for 1999, 2000 and 2001 suggests that he may not be as unsophisticated as he pretends and that his pro se status relates to an unwillingness, not an inability, to secure an attorney.

Even if we were to assume that Stearman is unsophisticated, what distinguishes this case from other tax protester cases in which we imposed lesser sanctions is that Stearman insulted this court, the Tax Court, and the opposing party. Even a *pro se* petitioner is required to be respectful in judicial proceedings.[21] Thus, it is difficult to imagine a lesser sanction that would vindicate the integrity of the court proceedings and deter Stearman from similar misconduct.[22] Wasteful and dilatory appeals

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[20] **[N.B.: For what Stearman finds "contemptible," to put it mildly, *see Stearman v. SMITH, et al.*, No. 3:06-CV-273-L (N.D. Tex. Dal. Div.) (filed 13 Feb 2006). WmCS]**

[21] **[N.B.: "Jurists" who *despise* the law deserve *respect?* Ha! Try censure, sanctions, and, where fitting, *jail!!* WmCS]**

[22] [n.18 in the original.] Rule 38 of the Federal Rules of Appellate Procedure provides that a court of appeals may award "just damages" and single or double costs for frivolous appeals. Rule 38 does not specify whether attorney's fees that may be awarded are (continued...)

(...continued) part of "just damages," or single or double "costs." Generally, statutes allowing sanctions either "define attorney's fees as an element of costs" or "separate fees from other taxable costs." *Hutto v. Finney*, 437 U.S. 678, 697 n. 28 (1978) (comparing 42 U.S.C. § 2000a-3(b) with 29 U.S.C. § 216(b) (1970 ed., Supp. V)). Section 2000a-3(b) is in the former category because it provides, in pertinent part, that the court in its discretion "may allow the prevailing party ... a reasonable attorney's fee as part of the costs." In contrast, § 216(b) states that the court shall "allow a reasonable attorney's fee to be paid by the

unjustifiably consume the limited resources of the judicial system: "While judges, staff and support personnel have expended energy to dispose of this meritless appeal, justice has been delayed for truly deserving litigants." *Foret v. S. Farm Bureau Life Ins. Co.*, 918 F.2d 534, 539 (5th Cir. 1990).

Other circuits have also long recognized the waste of judicial resources occasioned by such groundless tax protester appeals: [⊥8]

> The doors of this courthouse are of course open to good faith appeals .... But we can no longer tolerate abuse of the judicial review process by irresponsible taxpayers who press stale and frivolous arguments, without hope of success on the merits, in order to delay or harass the collection of public revenues or for other nonworthy purposes.

Granzow v. Comm'r, 739 F.2d 265, 270 (7th Cir. 1984). The court in *Granzow* also warned that it will not hesitate to impose even greater sanctions for frivolous tax protester appeals under appropriate circumstances. *Id.*

We therefore AFFIRM the decision of the Tax Court, including the $25,000 in sanctions, and impose $12,000 in sanctions on Stearman for pursuing a frivolous appeal.

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defendant, and costs of the action."

Unlike § 216(b), rule 38 does not define attorney's fees as an element separate from costs. Therefore, if attorney's fees are an element of costs, double costs may include double attorney's fees. Additionally, "just damages" that would vindicate the integrity of the judicial proceeding and deter Stearman from future misconduct could include double attorney's fees. Here, the Commissioner argued in his motion for sanctions that the average expense in attorney salaries and other costs that it incurred in defending frivolous taxpayer appeals in which sanctions were awarded during 2001 and 2002 was approximately $6,900. Thus, $12,000 is not more than double attorney's fees and other costs, that is, not more than "double costs" and "just damages."

Rule 14.1(i)(ii)—Additional Orders

No additional orders on appeal.

Rule 14.1(i)(iii)—Rehearing

No rehearing sought or granted.

Rule 14.1(i)(iv)—Judgment of different date

No judgment of date different from the opinion.

Rule 14.1(i)(v)—Statutes and Rules

See the petition.

Rule 14.1(i)(vi)—Additional Essential Materials

Trial Court

Docket Sheet—No. 20928-03

06/02/05

UNITED STATES TAX COURT
DOCKET ENTRIES

Docket No. 20928-03 INDEX
William C. Stearman, III
v. COMMISSIONER OF INTERNAL REVENUE

504 S. Denton Tap Rd. Pro Se
Coppell, TX 75019

NO.	DATE	EVENT	FILING AND PROCEEDINGS
0001	12/08/03	PF	PETITION Filed:Fee Paid [23]
0002	12/08/03	DPT	DESIGNATION of Trial at Dallas, TX
0003	02/02/04	ACS	ANSWER (C/S 01/30/04).
0004	02/13/04	RPT	REPORT by petr. (C/S 2-9-04)
0005	06/30/04	NTD	NOTICE of Trial on 12/06/04 at Dallas, TX.
0006	06/30/04	SPTO	STANDING PRE-TRIAL ORDER attached to Notice of Trial
[6.01]	**09/20/04**		***Pollock I* Notice**
[6.02]	**09/20/04**		**Motion for Judgment on the Pleadings**
[6.03]	**09/20/04**		**Objection to Rule 91**
[6.04]	**09/20/04**		**Objection to Rule 121**
[6.05]	**09/20/04**		**Objection to Rule 120**
[6.06]	**09/20/04**		**Objection to Rule 50**
[6.07]	**09/20/04**		**Objection to Rule 21**
[6.08]	**09/20/04**		**Status Report**
[6.09]	**09/20/04**		**Notice Standards for Conference Calls**
[6.10]	**09/24/04**		**The "unfiling" "secret order" (for the preceding nine documents)**
[6.11]	**10/27/04**		**The motion to allow discovery or grant a continuance**
[6.12]	**10/27/04**		**Discovery Instructions and Definitions**
[6.13]	**10/27/04**		**Request for Admissions**
[6.14]	**10/27/04**		**Objection to Discovery Rules 70 and 90**

[23] Shading added.

ACT/STAT	DTE	SERVED	M
		R 12/10/03	
		R 12/10/03	
		B 06/30/04	C
		B 06/30/04	C

NO.	DATE	EVENT	FILING AND PROCEEDINGS
[6.15]	**10/27/04**		**First Notice of Lien (READ (atty for COMMISSIONER))**
[6.16]	**11/03/04**		**The "unfiling" "secret order" (which "unfiled" the preceding five documents, and some others)**
0007	11/02/04	MOTR	MOTION by resp. to dismiss for failure to state a claim & to impose a penalty. (Leave Gr.)
0008	11/04/04	MOTP	MOTION by resp. to consolidate 20928-03 & 15561-04. (C/S 11/3/04)
0009	11/05/04	O	ORDER Petr. by 11/15/04 file obj. to mot to consolidate.
0010	11/18/04	O	ORDER set 12/6/04 Dallas, TX for hearing on mot. to dismiss. Petr. by 11/29/04 file a response to said mot. to dismiss.
0011	11/18/04	OBJ	OBJECTION by resp. to petr's request for admissions LODGED (C/S 11/17/04)
0012	11/19/01	O	ORDER. Petr. by 11/29/04 file . Request for Admissions
0013	11/22/04	O	ORDER mot. is Gr. & 20928-03 & 15561-04 are consolidated.
0014	11/23/01	MISC	PROBABLE CAUSE AFFIDAVIT by Petr. w/Exhs. LODGED. (For the record Per Judge)
0015	11/24/04	RPT	REPORT by Petr. (Per Judge)
0016	11/24/01	RESP	RESPONSE by Petr. to mot to dismiss for failure to state aclaim & to impose a penalty. (Per Judge).

ACT/STAT	DTE	SERVED	M
		P 11/18/04	C
ORD	03/03/05		
ORD	11/22/04		
		B 11/05/04	C
		B 11/18/04	C
		B 11/19/04	C
		B 11/23/04	C
		R 01/14/05	
		R 12/02/01	

NO.	DATE	EVENT	FILING AND PROCEEDINGS
0017	12/06/04	HEAR	HEARING before Judge Vasquez at Dallas, TX Resp. mot. to dismiss filed 11-2-04--C.A.V (Continued to page 2)

NO.	DATE	EVENT	FILING AND PROCEEDINGS
0018	01/03/05	TRAN	TRANSCRIPT of 12-6-04 recd. (Cal Call)
0019	03/03/05	MOP	MEMORANDUM OPINION, Judge Vasquez T.C. Memo. 2005-39 (Appropriate orders of dismissal & decisions will be entered.)
0020	03/03/05	ODD	ORDER OF DISMISSAL AND DECISION ENTERED, Judge Vasquez. Resp. mot. to dismiss Gr.

APPELLATE PROCEEDINGS

0021	05/23/05	NOAP	NOTICE OF APPEAL by petr(s). to U.S.C.A., 5th Cir. FEE PAID (Appeal also filed in 15561-04.)
0022	05/25/05	NOFC	NOTICE of Filing with copy of Not. of App. sent to the parties.

ACT/STAT	DTE	SERVED	M
ORD	03/03/05		

ACT/STAT	DTE	SERVED	M
		B 03/03/05	C
		B 03/03/05	C
		B 05/25/05	C
		B 05/25/05	C

Supreme Court, U.S.
FILED
05136 4 APR 10 2006
OFFICE OF THE CLERK

No.

In The
SUPREME COURT OF THE UNITED STATES

William C. Stearman, III,
Plaintiff-Appellant-Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee-Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SUPPLEMENT TO APPENDIX A FOR THE ORIGINAL PETITION FOR WRIT OF CERTIORARI

WILLIAM C. STEARMAN, III
504 SOUTH DENTON TAP ROAD
COPPELL, TEXAS [75019]

Supplement to Appendix A
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Rule 14.1(i)(i)--Appellate Opinion and Judgment

2006 Jan 13

***See* Appendix A**

Rule 14.1(i)(i)—Additional Orders on Appeal

***See* Appendix A**

Rule 14.1(i)(ii)—Trial Court Judgment and Opinion

2005 March 3—Tax Court Judgment, No. 20938-03

20 [1]

UNITED STATES TAX COURT
WASHINGTON, DC 20217

WILLIAM C. STEARMAN III, Petitioner	)	
v.	)	Docket No. 20928-03
COMMISSIONER OF INTERNAL REVENUE, Respondent	)	

ORDER OF DISMISSAL AND DECISION

Pursuant to the determination of the Court, as set forth in its opinion filed March 3, 2005, it is

ORDERED that respondent's motion to dismiss for failure to state a claim upon which relief can be granted and to impose a penalty under I.R.C. section 6673, filed November 2, 2004, is granted. It is further

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[1] Document No.

ORDERED and DECIDED that there are deficiencies in income tax and additions to tax due from petitioner as follows:

		Additions to Tax	
Year	Deficiency	Sec. 6651(a)(1)	Sec. 6654
1999	$77,334	$16,076.50	$3,042.09
2000	31,538	5,094.50	1,022.26
2001	183,861	43,920.00	6,984.51

It is further

ORDERED that a penalty in the amount of $12,500 is hereby awarded to the United States pursuant to I.R.C. section 6673.

/s/ Juan F. Vasquez

Juan F. Vasquez
Judge

ENTERED: **MAR - 3 2005**

SERVED MAR - 3 2005

2005 March 3—Tax Court Judgment, No. 15561-04

012 [2]

UNITED STATES TAX COURT
WASHINGTON, DC 20217

WILLIAM C. STEARMAN III,	)	
Petitioner	)	
v.	)	Docket No. 15561-04
COMMISSIONER OF	)	
INTERNAL REVENUE,	)	
Respondent	)	

[2] Document No.

ORDER OF DISMISSAL AND DECISION

On December 6, 2004, the Court took under advisement respondent's oral motion to dismiss for failure to state a claim and to impose a penalty under I.R.C. section 6673. Pursuant to the determination of the Court, as set forth in its Opinion filed March 3, 2005, it is

ORDERED that respondent's oral motion to dismiss for failure to state a claim and to impose a penalty under I.R.C. section 6673 is granted. It is further

ORDERED and DECIDED that there is a deficiency in income tax due from petitioner in the amount of $874.00 for the taxable year 2002;

That there is an addition to tax due from petitioner under I.R.C. section 6651(a)(1) in the amount of $253.46 for the taxable year 2002; and

That there is a penalty due from petitioner, which is hereby awarded to the United States, in the amount of $12,500 pursuant to I.R.C. section 6673.

/s/ Juan F. Vasquez

Juan F. Vasquez
Judge

ENTERED: **MAR - 3 2005**

SERVED MAR - 3 2005

2005 March 3—Tax Court T.C. Memo. 2005-39

T.C. Memo. 2005-39

UNITED STATES TAX COURT

WILLIAM C. STEARMAN III, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket Nos. 20928-03, 15561-04. Filed March 3, 2005.

William C. Stearman III, pro se.
Donna B. Read, for respondent.

MEMORANDUM OPINION

VASQUEZ, Judge: These cases are before the Court on respondent's motions to dismiss for failure to state a claim upon which relief could be granted and to impose a penalty under section 6673(a). [1] [⊥ 2]

Background

By notice dated June 30, 2004 the Court set this case for trial at the Court's Dallas, Texas, session beginning December 6, 2004. This notice specifically stated: "YOUR FAILURE TO APPEAR MAY RESULT IN DISMISSAL OF THE CASE AND ENTRY OF DECISION AGAINST YOU." Attached to this notice was the Court's standing pretrial order.

On November 2, 2004, in docket No. 20928-03, respondent filed a motion to dismiss for failure to state a claim upon which relief could be granted and to impose a penalty under section 6673(a). Petitioner failed to appear at the call of these consolidated cases. [2] At the call of

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[1] Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and (continued...)
[⊥ 2] (...continued) Procedure.

[2] On Nov. 22, 2004, the Court granted respondent's motion to

petitioner's cases, in docket No. 15561-04, respondent orally moved the Court to dismiss for failure to state a claim upon which relief could be granted and to impose a penalty under section 6673(a).

Discussion

Rule 34(b)(4) requires that a petition filed in this Court shall contain clear and concise assignments of each and every error that the taxpayer alleges to have been committed by the Commissioner in the determination of the deficiency and the additions to tax or penalties in dispute. Rule 34(b)(5) further [⊥ 3] requires that the petition shall contain clear and concise lettered statements of the facts on which the taxpayer bases the assignments of error. Funk v. Commissioner, 123 T.C. 213, 215 (2004); Jarvis v. Commissioner, 78 T.C. 646, 658 (1982). Any issue not raised in the pleadings is deemed to be conceded. Rule 34(b)(4); Funk v. Commissioner, supra; Jarvis v. Commissioner, supra at 658 n.19; Gordon v. Commissioner, 73 T.C. 736, 739 (1980). Further, the failure of a party to plead or otherwise proceed as provided in the Court's Rules may be grounds for the Court to hold such party in default, either on the motion of another party or on the initiative of the Court. Rule 123(a); Ward v. Commissioner, T.C. Memo. 2002-147. The Court also may dismiss a case and enter a decision against a taxpayer for his failure properly to prosecute or to comply with the Rules of this Court. Rule 123(b); Ward v. Commissioner, supra.

We agree with respondent that petitioner has failed to state a claim upon which relief can be granted. See Funk v. Commissioner, supra at 216-217. Furthermore, petitioner failed to properly prosecute his case. Accordingly we shall dismiss petitioner's cases and enter decisions sustaining respondent's determinations. Rules

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consolidate.

34(a), 123; Funk v. Commissioner, supra at 218.

Section 6673(a)(1) authorizes this Court to require a taxpayer to pay to the United States a penalty not to exceed $25,000 if the taxpayer took frivolous or groundless positions in [⊥ 4] the proceedings or instituted the proceedings primarily for delay. A position maintained by the taxpayer is "frivolous" where it is "contrary to established law and unsupported by a reasoned, colorable argument for change in the law." Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir. 1986); see also Hansen v. Commissioner, 820 F.2d 1464, 1470 (9th Cir. 1987) (section 6673 penalty upheld because taxpayer should have known claim was frivolous).

Petitioner attached to his petition in docket No. 15561-04 a six-page letter replete with tax-protester rhetoric, asserting there is no such thing as an income tax and containing arguments regarding the 16th Amendment.

On February 13, 2004, petitioner filed, in docket No. 20928-03, a status report stating: "Upon receipt of the Answer, Petitioner respectfully declines to animate the person, capacity or usage proposed by Respondent, and he is content to await notice of any sua sponte activity relevant to this matter."

On November 18, 2004, in docket No. 20928-03, the Court lodged respondent's objection to petitioner's request for admissions, which respondent attached to his objection. [3] On November 19, 2004, pursuant to Rule 90, the Court ordered [⊥ 5] petitioner to file his request for admissions. Petitioner failed to do so.

On November 23, 2004, the Court lodged, in both dockets, a document entitled "Probable Cause Affidavit"

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[3] We note that petitioner's requests included: "'Taxpayer' means fiduciary," "'United States' is a federal corporation," and "'UNITED STATES OF AMERICA' is another federal corporation."

with attached exhibits (PCA), which petitioner had submitted to the Court. The PCA alleged various criminal acts taken by the Court, objected to the Tax Court Rules, requested "production" of a Tax Court Judge, and contained "interrogatories" directed to a Tax Court Judge.

On November 24, 2004, petitioner filed status reports in both dockets. The status reports contain disrespectful and vulgar statements directed to the Court, and we shall not repeat them herein. That same day, in docket No. 20928-03, petitioner filed a response to respondent's motion to dismiss for failure to state a claim upon which relief could be granted and to impose a penalty under section 6673(a).[4]

Several of the documents filed or lodged with the Court by petitioner contain the heading: "UNITED STATES TAX COURT (a federal corporation, committing criminal acts under disguise of providing professionally incompetent arbitration services, while doing business in 'this state' via a tax exemption certificate[)]."

Petitioner has advanced shopworn arguments characteristic of tax-protester rhetoric that has been universally rejected by this [⊥ 6] and other courts. Wilcox v. Commissioner, 848 F.2d 1007 (9th Cir. 1988), affg. T.C. Memo. 1987-225; Carter v. Commissioner, 784 F.2d 1006, 1009 (9th Cir. 1986). We shall not painstakingly address petitioner's assertions "with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984).

We conclude that in both dockets petitioner's position was frivolous and groundless and that petitioner

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[4] We note that on the response petitioner also listed docket No. 15561-04. For filing purposes, this docket number was crossed out.

instituted and maintained these proceedings primarily for delay. Although there were some minor differences between the frivolous and dilatory actions taken in each docket prior to consolidation, petitioner's actions in both dockets merit similar penalties. Accordingly, pursuant to section 6673(a), we hold petitioner is liable for a $12,500 penalty in docket No. 20928-03 and a $12,500 penalty in docket No. 15561-04. [⊥ 7]

To reflect the foregoing,

Appropriate orders of dismissal and decisions will be entered.

Rule 14.1(i)(ii)—Companion Case: Appellate Opinion and Judgment

United States Court of Appeals
Fifth Circuit
F I L E D
March 29, 2006
Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-60552
Summary Calendar

RICHARD JOHN FLORANCE, JR.,

Petitioner-Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee

Appeal from the United States Tax Court
(11782-03 and 18209-03)

Before KING, WIENER and DeMOSS, Circuit Judges.

PER CURIAM: *

Proceeding pro se, Petitioner-Appellant Richard John Florance, Jr., appeals adverse rulings of the United States Tax Court. We note that, in addition to rulings against Florance on all substantive issues, the Tax Court imposed sanctions grounded primarily in the frivolousness of his cases and the actions he took in prosecuting them. Now, in addition to seeking our affirmance of the Tax Court in all respects, Respondent-Appellee Commissioner of Internal Revenue asks us to impose sanctions against Florance for bringing a frivolous appeal.

Based on our review of the record on appeal, including the rulings and reasoning of the Tax Court and its imposition of sanctions, the operative facts and the appellate briefs of the parties, we too conclude that the Tax Court correctly ruled in favor of the Commissioner on all substantive matters as well as sanctions, and that Florance's contentions there as here are wholly without merit.

Turning to sanctions for a frivolous appeal, the Commissioner has clearly made a case for their imposition, and Florance has failed to file a response or opposition thereto. Noting the sanctions already imposed by the Tax Court, and further noting that Florance is before us pro se, we decline to assess further monetary penalties. We do, however, order the Clerk of this Court to refuse to accept for filing any further pleadings or other

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

instruments received from Florance or on his behalf without first obtaining authorization of a judge of this court.

AFFIRMED; ORDER ISSUED PROHIBITING FUTURE FILINGS. **

Rule 14.1(i)(ii)—Companion Case: Trial Court Opinion and Judgment

UNITED STATES TAX COURT
WASHINGTON, DC 20217

SCOTT WALLIS,	)	
Petitioner	)	
v.	)	Docket No. 8244-04
COMMISSIONER OF	)	
INTERNAL REVENUE,	)	
Respondent	)	

ORDER OF DISMISSAL AND DECISION

This case was calendared for the March 14, 2005, Trial Session in Dallas, Texas. No appearance was made by or on behalf of petitioner. Counsel for respondent appeared before the Court and filed a motion to dismiss for lack of prosecution. Upon due consideration, and for reasons further appearing in the transcript of this case, it is

ORDERED that respondent's motion to dismiss for lack of prosecution, filed March 14, 2005, is granted, and this case hereby is dismissed for lack of prosecution. It is further

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** [N.B.: There very well may be matters to address when that bridge is crossed. If the present ruling, as stated, prevents a meltdown in DOJ, then there's value in this ruling. WmCS]

ORDERED AND DECIDED that there is a deficiency in income tax due from petitioner as follows:

Year	Deficiency	Penalty under I.R.C. § 6651(a)(1)	Penalty under I.R.C. § 6654
2000	$3,503.00	$ 875.75	$187.11
2001	$7,628.00	$1,907.00	$304.82

(Signed) Maurice B. Foley

Maurice B. Foley
Judge

ENTERED: **NOV 30 2005**

Rule 14.1(i)(ii)—Companion Case: Trial Court Motion

UNITED STATES TAX COURT

SCOTT WALLIS,	)	
Petitioner	)	
v.	)	Docket No. 8244-04
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AND TO IMPOSE A PENALTY UNDER I.R.C. § 6673

RESPONDENT MOVES, pursuant to the provisions of Tax Court Rule 40, that the Court dismiss this case for failure to state a claim upon which relief can be granted, and that the Court find in its order that there are due from Petitioner deficiencies in income tax and additions to tax for the years and in the amounts set forth in the Notices of Deficiency dated February 18, 2004, upon

which Notices this case is based. [1]

IN SUPPORT THEREOF, Respondent respectfully states: [⊥ 2]

1. Respondent, in the Notices of Deficiency issued to Petitioner on February 18, 2004, copies of which are attached as Exhibits A and B, respectively, determined deficiencies and additions to tax for the 2000 and 2001 tax years as follows:

Year	Deficiency	§ 6651 Addition to tax	§ 6654 Addition to tax
2000	$35,197.00	$8,799.25	$1,880.05
2001	$52,808.00	$13,202.00	$2,110.39

2. Subsequent to the issuance of the Notices of Deficiency, Respondent received additional information from Petitioner and determined that the deficiencies and additions to tax should be adjusted downward. Respondent issued the revised findings for 2000 and 2001 in two letters dated May 7, 2004, copies of which are attached as Exhibits C and D, respectively. In these letters, Respondent determined deficiencies and additions to tax for the 2000 and 2001 tax years as follows:

Year	Deficiency	§ 6651 Addition to tax	§ 6654 Addition to tax
2000	$3,503.00	$875.75	$187.11
2001	$7,628.00	$1,907.00	$304.82

3. Respondent, in the revised findings issued to Petitioner as set forth above, determined deficiencies and additions to tax for the 2000 and 2001 tax years based upon [⊥ 3] income received by Petitioner from interest and debt cancellation.

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[1] Respondent made significant concessions in the Answer. Respondent seeks only the deficiencies and additions to tax set forth in the Answer and paragraph two of this motion.

4. On May 18, 2004, Petitioner filed a Petition with this Court and alleged a disagreement with the Notices of Deficiency and revised deficiency letters. The Petition, a copy of which is attached as Exhibit E, is not in conformance with Tax Court Rule 34(b).

5. Tax Court Rule 34(b) provides in pertinent part that the petition in a deficiency action shall contain "clear arid concise assignments of each and every error which the Petitioner alleges to have been committed by the Commissioner in the determination of the deficiency or liability. ... Any issue not raised in the assignment of errors shall be deemed to be conceded."

6. Petitioner's assignment of errors, upon which this case is based, alleges several frivolous constitutional arguments, including, but not limited to:

(a) Collections agents are working for an undisclosed principle and/or an undisclosed fiduciary; therefore there is no duty to pay taxes.

(b) There is no basis for the peralties or interest asserted. [⊥ 4]

(c) The Secretary has not signed the Notices of Deficiency nor has the Secretary submitted any other statements or claims to the Petitioner.

7. Petitioner makes no material allegations of fact in support of any of the errors assigned in the Petition but argues only vaguely stated law and legal conclusions therein.

8. No justiciable error has been alleged in the Petition with respect to the Commissioner's determination set forth in the Notices of Deficiency or revised deficiency letters and no facts in support of any such error are apparent therein. The absence in the Petition of specific justiciable allegations of error and of supporting facts permits this Court to grant Respondent's Motion. Tax Court Rule 123(b). Carskadon v. Commissioner, T.C.

Memo. 2003-237; Bernsdorff v. Commissioner, T.C. Memo. 1994-634; Klein v. Commissioner, 45 T.C. 308 (1965); Goldsmith v. Commissioner, 31 T.C. 56 (1958).

9. The document filed in this case is not a proper petition, but rather is a statement making frivolous constitutional arguments with no factual basis. Petitioner's positions are totally without merit. This Court and other Federal Courts have repeatedly upheld the validity of the Federal income tax laws against such challenges. Michael v. [⊥ 5] Commissioner, T.C. Memo. 2003-26; Johnson v. Commissioner, T,C. Memo. 1999-312; Abrams v. Commissioner, 82 T.C. 403 (1984).

10. The document filed as the Petition does not comply with the Rules of the Tax Court as to the form and content of the Petition and fails to state a claim upon which relief can be granted.

11. Petitioner merely filed this Petition as a protest to paying income taxes. Furthermore, Petitioner has filed excessively burdensome and frivolous documents with the Court such as Petitioner's Objection to Rule 50, Petitioner's Objection to Rule 120, a *Pollock I* Notice, Wallis' First Notice of Lien on Judge Joel Gerber, and Wallis' Second Notice of Lien on Respondent's Counsel, copies of which are attached as Exhibits F, G, H, I and J, respectively. Such action falls within the bounds of I.R.C. § 6673, based on the fact the Petitioner has instituted these proceedings primarily for the purpose of delay and the Petitioner's position in the case is groundless and frivolous. Respondent requests the Court impose § 6673 sanctions in an amount it deems appropriate as the Court has done so in other such frivolous cases.

12. Pursuant to I.R.C. § 7491(c), Respondent bears the burden of production in any court proceeding with respect to the imposition of penalties and additions to tax. [⊥ 6]

a.) Respondent asserts that Petitioner is liable for I.R.C. 6651(a) (1) additions to tax for the 2000 and

2001 tax years. Attached as Exhibits K and L are certified MFTRA-X transcripts for Petitioner's 2000 and 2001 tax years, respectively, showing that Petitioner failed to file federal income tax returns for the 2000 and 2001 tax years.

b.) Respondent asserts that Petitioner is liable for I.R.C [2] § 6654 additions to tax for the 2000 and. 2001 tax years. The MFTRA-X transcripts of Petitioner's accounts for 2000 and 2001 (Exhibits K and L) show. that Petitioner failed to make any estimated income tax payments in those years. Additionally, attached as Exhibit M is a certified IRPTR transcript for Petitioner's 1999 tax year showing that Petitioner had an income tax liability for the 1999 tax year and is not excepted from making estimated tax payments toward the 2000 tax year under I.R.C. § 6654(e)(2). [1 7]

WHEREFORE, Respondent prays that this Motion be granted and that this Court impose sanctions in an appropriate amount pursuant to I.R.C. S 6673.

DONALD L. KORB
Chief Counsel
Internal Revenue Service

Date: FEB 0 4 2005 By: */s/ Brook R. Barrow*
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[2] As such in the original.

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Area Counsel
(Small Business/Self-Employed, Area 6)
LINDA L. WONG
Associate Area Counsel
(Small Business/Self-Employed, Area 6) [⊥ 8]

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AND TO IMPOSE A PENALTY UNDER I.R.C. § 6673 was served on Petitioner by mailing the same on FEB 0 4 2005 in a postage paid wrapper addressed as follows:

Scott Wallis
[appropriate address]

Date FEB 0 4 2005 */s/ Brook R. Barrow*
BROOK R. BARROW
Senior Attorney
(Small Business/Self-Employed)
Tax Court Bar No. RB0206